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JUDGE SULLIVAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

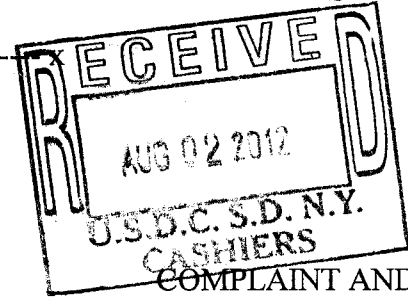
12 CV 5933

CURTIS MITCHELL, DEMETRICE PERRY,  
SHAQUWAN PERRY, SHAQUANA PERRY, and  
NINA WILLIAMS

Plaintiffs,

-v-

CITY OF NEW YORK, OFF. DAVID LAMBERT (Shield No.12878) 12 CV  
OFF. JOHN AND JANE DOES, POLICE OFFICERS FOR  
THE CITY OF NEW YORK, INDIVIDUALLY AND AS  
POLICE OFFICERS FOR THE CITY OF NEW YORK,  
Defendants



COMPLAINT AND  
DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is an action for damages for the wrongful acts of defendants NEW YORK CITY and OFF. DAVID LAMBERT, OFF. JOHN and JANE DOES of the New York City Police Department, all acting under color of state law and pursuant to their authority, in violation of plaintiffs' rights under the Constitution and laws of the United States and the State of New York.

2. Plaintiffs allege that beginning on or about May 5, 2011, defendants committed wrongful and illegal acts against Plaintiffs by falsely arresting them and imprisoning them, maliciously prosecuting one of them (Curtis Mitchell), and violating their Federal and New York State civil rights.

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NEW YORK, N.Y. 10279

### **JURISDICTION**

3. This action is brought under 42 U.S.C. Section 1983 in conjunction with the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the constitutional, statutory and common laws of New York State.

4. Jurisdiction is invoked herein pursuant to the aforementioned statutory and constitutional provisions and pursuant to 28 U.S.C. Section 1331 and 1343, this being an action seeking redress for the violation of the plaintiffs' constitutional and civil rights.

5. Plaintiffs further invoke this Court's pendant jurisdiction over any and all state law claims and causes of action which derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action, pursuant to Title 28, U.S.C. section 1367.

6. Venue is laid within the United States District Court for the Southern District of New York in that the defendants reside in and their principal place of business is located in the Southern District of New York.

### **TRIAL BY JURY**

7. Plaintiffs demand a trial by jury on each and every one of their claims as pled herein.

### **PARTIES**

8. At all times relevant hereto, plaintiffs CURTIS MITCHELL, DEMETRICE PERRY, SHAQUWAN PERRY, SHAQUANA PERRY and NINA WILLIAMS were residents of Brooklyn, New York.

9. At all times relevant hereto, defendant NEW YORK CITY was and is a municipality of the State of New York and owns, operates, manages, directs and controls the New York City Police Department, which employs the other named defendants.

10. Defendant DAVID LAMBERT is and was at all times relevant to this action a police officer, employed by the New York City Police Department, and acting under color of state law. He is being sued in both his individual and official capacities.

11. Defendants JOHN and JANE DOES are and were at all times relevant to this action police officers, employed by the New York City Police Department, and acting under color of state law. They are being sued in both their individual and official capacities.

12. At all times relevant hereto and in all their actions described herein, defendants DAVID LAMBERT, JOHN AND JANE DOES were acting under color of the statutes, ordinances, regulations, policies, customs and usages of the New York City Police Department and New York City, pursuant to their authority as employees, servants and agents of the New York City Police Department, within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents and police officers.

13. The conduct and injuries complained of herein ensued without any negligent or culpable conduct on the part of plaintiffs.

#### **NOTICE OF CLAIM**

14. On July 28, 2011, plaintiffs' Notices of Claim were filed with the Comptroller's Office of the City of New York. More than thirty days have elapsed since the filing of the Notices of Claim and these matters have not been settled nor otherwise disposed of.

15. On January 24, 2012, hearings pursuant to New York State General Municipal Law §50-h were held at which time plaintiffs were questioned by a representative of defendant New York City.

16. The transcripts of these hearings are attached hereto as Exhibit A-1 through A-5 and as factual support for the causes of action alleged herein and are made a part of this Complaint.

**FACTUAL BACKGROUND**

17. Plaintiff's Curtis Mitchell and Demetrice Perry were residing at 433 Lafayette Avenue, Apt.12A, Brooklyn, New York 11238, along with Ms. Perry's two children, Shaquwan Perry and Shaquana Perry on the date in question, May 5, 2011.

18. All were present in the apartment at approximately 6:25AM when police forcibly and without permission or proper authority entered the premises.

19. Also present in the apartment was a guest, Plaintiff Nina Williams.

20. Mr. Mitchell also resided at that time, sometimes two or so nights a week, at 155 Clifton Place, Brooklyn, New York 11238, the home of his father and other family members.

21. At approximately 6:25 AM on May 5, 2011, police officers broke through the entrance door to the apartment.

22. They then broke into the bedroom in which Mr. Mitchell and Ms. Demetrice Perry were sleeping.

23. They were wearing helmets, other special gear and carrying firearms.

24. They told the occupants to freeze.

25. They grabbed Mr. Mitchell and handcuffed him.

26. They also handcuffed Ms. Demetrice Perry.

27. Without asking any questions nor uncovering any evidence of a crime, Mr. Mitchell and Ms. Perry were detained, handcuffed and effectively placed under arrest.

28. Despite asking what was the reason for their entrance into the apartment and being

placed into custody, the police only told Mr. Mitchell that they had to wait for a detective to arrive.

29. A detective arrived later and started screaming at Mr. Mitchell.

30. He asked Mr. Mitchell to tell him about guns and drugs.

31. Mr. Mitchell was telling the detective that he's got the wrong person.

32. The detective threatened Mr. Mitchell, telling him that if he didn't tell him where guns and drugs were, the detective would arrest his whole family and take them to jail.

33. By that time, the police had all the plaintiffs in custody.

34. Everyone was handcuffed except Shaquana who was holding her two-week old baby.

35. Mr. Mitchell was searched but no contraband was found.

36. Despite the lack of any evidence of a crime, Mr. Mitchell was arrested, removed from the apartment and taken to the 79<sup>th</sup> Precinct.

37. Mr. Mitchell was strip-searched.

38. Eventually, Mr. Mitchell was told he was being charged with possession of heroin.

39. Mr. Mitchell was innocent of that crime and there was no basis to arrest him for it.

40. After Mr. Mitchell went before the judge, over fourteen hours later, he was then remanded to Rikers Island.

41. Because Mr. Mitchell was innocent, he decided to testify before the grand jury that was hearing his case.

42. This was almost two weeks after his arrest.

43. On May 20, 2011, the Grand jury voted not to indict Mr. Mitchell and dismissed the case against him. (See Ex.B)

44. As a result, Mr. Mitchell was released from custody.

45. When Mr. Mitchell returned to the apartment, it remained in the same condition it was after his arrest after the police searched it.

46. Many personal possessions had been effectively destroyed.

47. The apartment had been completely searched.

48. The police had opened all the closets and the drawers, thrown all the personal property around and, in general, left the apartment in a complete mess.

49. Ms. Perry had recorded the condition of the apartment after the police ransacked it with a camcorder.

50. Ms. Perry, who had never been arrested, had lived in the same apartment for twelve years.

51. Also living there on May 5, 2011 were her son, Shaquwan and daughter, Shaquana and her infant granddaughter who was only two weeks old.

52. Nina Williams, a friend, was a visitor.

53. Ms. Demetrice Perry was sleeping when the police shone a light in her face about 6:20 AM.

54. Ms. Perry was under the covers and had no clothes on.

55. The police had kicked her bedroom door open.

56. About six police officers had come into her bedroom dressed like a "SWAT" team.

57. They were armed with firearms including long guns with lights on them.

58. One of the firearms was placed right in her face.

59. She was forced out of bed, threw on something and was immediately handcuffed.

60. Mr. Perry asked to see a warrant but was not shown one. (See Ex.C, search warrant)

61. She was taken to the living room where she saw her son Shaquwan and visitor Nina Williams in handcuffs.

62. They were forced to stand in the living room handcuffed for over a half hour.

63. During that time, the police "tore up" the entire apartment.

64. They pulled everything out of the closets and drawers, lifted up the mattresses and threw everything around; knocked lamps down and pulled containers down.

65. They took cash and silver dollars that Ms. Perry was saving for her granddaughter.

66. They also ransacked the second bedroom where Shaquana and her two-week old baby had been sleeping.

67. The police threw all the baby's clothes around and flung her stroller.

68. After the half-hour in the living room, the police took Ms. Perry, her son, her daughter and infant, and Nina Williams into Shaquana's room and made them stay there handcuffed for an hour.

69. The police had opened all the windows causing the baby to catch a cold.

70. The police remained in the apartment for about three hours and stayed there for a least two hours even after Mr. Mitchell was taken to the precinct.

71. Since the police had busted open the front door and destroyed it, Ms. Perry had to replace it with a brand new one.

72. Appliances like a DVD player that the police broke had to be replaced.

73. As a result of the trauma caused by the police, Mr. Perry sought the help of a psychiatrist whom she has seen over ten times.

74. She has difficulty sleeping and relives the experience.

75. She was prescribed medication in June, 2011 to calm her nerves which she continues to

take.

76. Plaintiff Nina Williams, Shaquana's friend, had been in her and her baby's room when the police confronted them

77. The police came into the room and put guns and lights in their faces.

78. The police were wearing shields and helmets.

79. Ms. Williams, who had been wearing only a bra and boxers, was not permitted to put clothes on and was handcuffed.

80. Ms. Williams was taken into the living room and remained there for a long time - still undressed - and handcuffed.

81. She was asked no questions.

82. She observed the police opening the kitchen cabinets and throwing around items therein including flour and sugar.

83. At the time the police came into Shaquana's room, she was sitting on the bed rocking her two-week old infant daughter, Arianna.

84. Shaquana heard banging and booming.

85. As she walked to the bedroom door, it was bust open and she saw a lady with a gun in Arianna's face screaming "let me see your hands."

86. The police took her (and the baby) into the livingroom.

87. Shaquana asked to go get a sheet to cover the baby because the windows had been opened but the police refused.

88. Despite many requests, the police did not show the Plaintiffs' a warrant.

89. After the incident, Shaquana had to replace some of her daughter's clothes because the police had thrown them down and stepped all over them.



90. Shaquana has had to take her daughter to the doctor because, since the incident, she wakes up and cries when she hears noises.

91. Shaquwan, who was sixteen at the time, was sleeping in the living room when the police broke into the apartment, shined a flashlight on him, put a gun to his face and handcuffed him.

**COUNT ONE: VIOLATION OF CONSTITUTIONAL RIGHTS**

92. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-91 of this complaint, as though fully set forth herein.

93. The acts, omissions and conduct of the defendants, all members of the New York City Police Department, and all acting under color of state law, deprived plaintiffs of their rights, privileges and immunities under the laws and Constitution of the United State; in particular the rights to be secure in their person and property, to be free from false arrest, false imprisonment, malicious prosecution, excessive force and cruel and unusual punishment and to due process.

94. By these acts, omissions and conduct, these individual defendants have deprived plaintiffs of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983, for which the defendants are individually liable.

**COUNT TWO: VIOLATION OF CONSTITUTIONAL RIGHTS  
(Defendant New York City)**

95. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-94 of this complaint, as though fully set forth herein.

96. The acts, omissions and conduct of defendant New York City, as set forth above, deprived plaintiffs of their rights, privileges and immunities under the laws and Constitution of the United States; in particular the rights to be secure in their person and property; to be free from

unlawful seizure, false imprisonment, malicious prosecution; excessive force and cruel and unusual punishment and to due process.

97. By these acts, omissions and conduct, defendant New York City has deprived plaintiffs of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983.

### **COUNT THREE: CONSPIRACY TO VIOLATE CIVIL RIGHTS**

98. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-97 of this complaint as though fully set forth herein.

99. The defendants conspired to violate plaintiffs' civil rights by agreeing between themselves to falsely place them in custody, charge one of them with crimes as described above, in violation of 42 U.S.C. 1983, for which defendants are individually liable.

### **COUNT FOUR: FALSE ARREST**

100. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-99 of this complaint, as though fully set forth herein.

101. The acts, omissions and conduct of defendants as alleged above, constitute false arrest under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

### **COUNT FIVE: FALSE IMPRISONMENT**

102. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-101 of this complaint, as though fully set forth herein.

103. The acts, omissions and conduct of defendants, as alleged above, constitute false imprisonment under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

**COUNT SIX: ASSAULT**

104. Plaintiffs repeat and re-allege the allegations in paragraphs 1-103 of this complaint, as though fully set forth herein.

105. The acts and conduct of defendants, as alleged above, constitute assault under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

**COUNT SEVEN: MALICIOUS PROSECUTION**

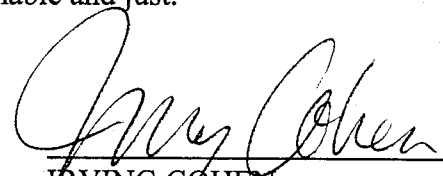
106. Plaintiff CURTIS MITCHELL repeats and re-alleges the allegations contained in paragraph 1-105 of this complaint, as though fully set forth herein.

107. The acts, omissions and conduct of defendants, as alleged above, constitute malicious prosecution under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

WHEREFORE, plaintiffs demand the following relief;

- a. Compensatory damages in the amount of two million (\$2,000,000 dollars).
- b. Punitive damages in the amount of two million (\$2,000,000 dollars).
- c. Reasonable attorneys fees and costs; and
- d. Such other and further relief as appears reasonable and just.

Dated: New York, New York  
August 1, 2012

  
\_\_\_\_\_  
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ORIGINAL

50-H HEARING

015220

- - - - - x BLA: 2011PI027480

In the Matter of the Claim of

CURTIS MITCHELL,

Claimant,

-against-

CITY OF NEW YORK, NEW YORK CITY POLICE

DEPARTMENT,

Respondents.

- - - - - x

225 Broadway, 13th Floor  
New York, New York

January 24, 2012  
12:12 p.m.

50-H HEARING of Curtis Mitchell, the  
Claimant in the above-entitled action, held at  
the above time and place, pursuant to Notice,  
taken before Karla Vallaro, a shorthand  
reporter and Notary Public within and for the  
State of New York.

Ex A-1



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25

A p p e a r a n c e s:

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233 Broadway, Suite 2701  
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BY: IRVING COHEN, ESQ.

SHAPIRO, BEILLY & ARONOWITZ, LLP  
ATTORNEYS for Respondents  
225 Broadway, 13th Floor  
New York, NY 10007  
BY: DAWN SHWARTZ, ESQ.  
FILE #: NYC-2212  
INDEX #: 2011PI027480



1

C. MITCHELL

2 CURTIS MITCHELL, the witness herein, having  
3 been first duly sworn by a Notary Public of  
4 the State of New York, was examined and  
5 testified as follows:

6 EXAMINATION BY

7 MS. SHWARTZ:

8 Q. State your name for the record,  
9 please.

10 A. Curtis Mitchell.

11 Q. State your address for the record,  
12 please.

13 A. 155 Clifton Place, Brooklyn, New  
14 York 11238.

15 Q. Good afternoon, sir. My name is  
16 Dawn Shwartz and I represent the city for the  
17 purposes of today's hearing. I'll be asking  
18 you some questions about your claim against  
19 the city.

20 I'm going to ask that all of your  
21 answers to my questions are verbal, so that  
22 the court reporter can down everything that  
23 we're saying, because she can't take down  
24 head shakes, head nods or hand gestures. If  
25 you don't understand my question, let me



1 C. MITCHELL

2 know. I'll try to rephrase it for you or say  
3 it in a different way.

4 If you need to speak with your  
5 attorney for any reason or take a break for  
6 any reason that's not a problem, just let us  
7 know. All I ask is that you answer the last  
8 question that I asked you before you go ahead  
9 and take that break. I'm also going to ask  
10 that even if you know what I'm going to ask  
11 you and you know what your answer is, you let  
12 me finish asking the question and then give  
13 your answer, because she can only take down  
14 what one of us is saying at a time.

15 A. I got you.

16 Q. How long have you lived at the  
17 address that you just gave to the reporter?

18 A. Lets say twenty, thirty years.  
19 Somewhere along there.

20 Q. Does anybody currently live there  
21 with you?

22 A. That's my father's house and I stay  
23 there with them.

24 Q. What is your dad's name?

25 A. Charles Mitchell.



1 C. MITCHELL

2 Q. When you say you stay there with  
3 them, who are you referring to?

4 A. My sisters and brothers there also.

5 Q. How many nights a week do you stay  
6 at the Clifton Place address?

7 A. Lets say about sometimes two -- two  
8 nights. It all depends on if I'm doing  
9 security, because I do night security off and  
10 on. And if, you know, I would say, well if I  
11 need to stay there. You know, a few nights.

12 Q. Do you have any other place that you  
13 reside?

14 A. Well, I stay with my girlfriend.  
15 Sometimes, I go over there.

16 Q. Where does she live?

17 A. She lives at 433 Lafayette Avenue.

18 Q. Is that an apartment number or  
19 private house?

20 A. 12A.

21 Q. What borough is that in?

22 A. That's in Brooklyn.

23 Q. What is your girlfriend's name?

24 A. Ann Perry.

25 Q. Perry, P-E-R-R-Y?





1 C. MITCHELL

2 A. Yes.

3 Q. How often do you stay with Ms. Perry  
4 on a weekly basis?

5 A. It would be maybe five or six. It  
6 all depends, because sometimes I work  
7 security and I don't go there. I may go by  
8 my father's or stay there or I stay at the  
9 security place sometimes where I use to work  
10 at. This is like on and off. You know,  
11 sometimes I have work, sometimes I don't have  
12 work. It all depends.

13 Q. Let me ask you this, where does your  
14 mail go?

15 A. My mail goes to my father's.

16 Q. At Clifton Place?

17 A. Yes.

18 Q. Have you ever gone by any other  
19 names or aliases?

20 A. Never.

21 Q. What is your social security number?

22 A. 082-58-0610.

23 Q. Your date of birth?

24 A. 3/20/62.

25 Q. Are you currently employed now?



1 C. MITCHELL

2 A. Well, I just recently stopped. I  
3 worked one day last week. That's it. I had  
4 an incident on the job, so I'm waiting to go  
5 back to work.

6 Q. Where were you working last week?

7 A. Last week I worked over by the  
8 ferry.

9 Q. Is this for security that you  
10 mentioned earlier?

11 A. No, this is -- this is cause I'm a  
12 union member. This is construction.

13 Q. What union are you part of?

14 A. Labors union, Local 731.

15 Q. Prior to last week, were you working  
16 on a regular basis?

17 A. I had just recently stopped November  
18 7th. You know, the job came to an end.

19 Q. Aside from your work in construction  
20 are you currently earning income any other  
21 way?

22 A. No.

23 Q. Are you currently receiving any  
24 Medicaid benefits?

25 A. No.



1

C. MITCHELL

2

Q. Are you currently receiving any

3

Medicare benefits?

4

A. No.

5

Q. As an adult, have you ever been

6

convicted of or pled guilty to any crimes or

7

offenses?

8

A. Yes.

9

Q. When was that?

10

A. That was in, let me see, I think it

11

was '02.

12

Q. What was the nature of that offense?

13

A. It was commercial burglary.

14

Q. Did you serve any time?

15

A. Yes.

16

Q. How much?

17

A. I served four years.

18

Q. Where did you serve that time?

19

A. I served it in a number of places.

20

I was at Adirondack, upstate. I was Lyon

21

Mountain. I was at Hale Creek and my last

22

stop Camp Visalia.

23

Q. Aside from the 2002 conviction, have

24

you had any other convictions or have you

25

pled guilty to any other crimes or offenses



1 C. MITCHELL

2 as an adult?

3 A. Yes.

4 Q. When was that?

5 A. Let me see, that was, when was it,  
6 2000 I think.

7 Q. What was that, sorry.

8 A. That was that 200. That was a  
9 possession charge.

10 Q. Possession of what?

11 A. Crack.

12 Q. Did you serve any time for that?

13 A. I did, let me see. I think I did  
14 two years.

15 Q. Any other convictions or instances  
16 where you pled guilty for any crimes or  
17 offenses?

18 A. Let me see, it was in '90 I believe.

19 Q. 1990?

20 A. Yes.

21 Q. What was the nature of that?

22 A. That was, that was '90. That was a  
23 possession the same thing.

24 Q. Possession of crack?

25 A. Yes.



1 C. MITCHELL

2 Q. Did you serve any time for that  
3 charge?

4 A. I did two years.

5 Q. Any other convictions?

6 A. '83, I think. Yes, I believe '83.  
7 That was a burglary.

8 Q. Again, did you serve any time for  
9 that?

10 A. Yes, I did. I think it was two and  
11 third to seven.

12 Q. Any other crimes or offenses that  
13 you pled guilty to or were convicted of that  
14 you can recall?

15 A. I think it was '81.

16 Q. What was the nature of that?

17 A. That was burglary.

18 Q. Any time served?

19 A. Two years.

20 Q. Any other crimes or offenses that  
21 you pled guilty to or were convicted of?

22 A. That's the furthest I can remember.

23 Q. Have you ever filed a claim against  
24 the City of New York before?

25 A. I had -- let me see, that was in '89



1

C. MITCHELL

2

I did. I lost contact with the lawyer and  
3 everything.

4

Q. What was the nature of that claim  
5 against the city?

6

A. Something happened to me inside the  
7 jail where I had got cut up by an inmate.

8

Q. Was that claim against city of New  
9 York or the State of New York?

10

A. I believe it was the city.

11

Q. Do you know what the final outcome  
12 of that claim was?

13

A. No.

14

Q. Did you ever receive any money or  
15 settlement from that claim?

16

A. No.

17

Q. Is that claim still going on? Is it  
18 still pending?

19

A. I don't know what happened. I tried  
20 to contact and they moved, because I was away  
21 and I just never really pursued it.

22

Q. Aside from the claim from 1999, have  
23 you ever filed any other claims against the  
24 City of New York?

25

A. No.



1 C. MITCHELL

2 Q. Have you ever filed to the best of  
3 your knowledge, any claims against the State  
4 of New York?

5 A. No.

6 Q. The claim today that we're here to  
7 talk about, can you tell me what date that  
8 happened?

9 A. May 5th.

10 Q. What year?

11 A. Last year, 2011.

12 Q. Approximately, what time did this  
13 happen?

14 A. Approximately, 6:25.

15 Q. Do you have any independent  
16 recollection of the time that happened or is  
17 the paper in front of you refreshing your  
18 memory as to the time it happened?

19 A. No, I know exactly. It happened at  
20 6:25.

21 Q. A.m. or p.m.?

22 A. A.m. in the morning.

23 Q. Where were you at that time?

24 A. I was in my bed. Sleeping in my  
25 room.



1 C. MITCHELL

2 Q. Which residence were you at? Were  
3 you at your dad's or your girlfriend's?

4 A. I was at my girlfriend's.

5 Q. That's the Lafayette Avenue  
6 apartment?

7 A. Yes.

8 Q. Do you know prior to 6:25 a.m. if  
9 there was anyone else in the apartment at  
10 that time?

11 A. Yes.

12 Q. Do you know who was there?

13 A. Shaquwan Perry, which is her son.

14 Her daughter Shaquana Perry and Nina.

15 Shaquana's friend and Ann, my girlfriend and  
16 her daughter, her the newborn baby. That's  
17 Shaquana's daughter.

18 Q. Your girlfriend Ann was there at  
19 that time?

20 A. Yes.

21 Q. Whose baby was that?

22 A. Shaquana's, her daughter.

23 Q. How young was the baby at the time?

24 A. Maybe two weeks.

25 Q. The person you mentioned Nina, do





1 C. MITCHELL

2 you know who that is?

3 A. That's her daughter's friend.

4 Q. Do you know Nina's last name?

5 A. I'm not sure. I forgot it.

6 Q. To your knowledge, was there anyone  
7 else in the apartment at that time?

8 A. No one else.

9 Q. When did you first arrive at the  
10 apartment, either the night before or that  
11 morning?

12 A. I was there a couple of days. A  
13 couple of days.

14 Q. Had you left the apartment at all in  
15 those few days?

16 A. Yes, I had left it and came back.

17 Q. You've been staying there for a  
18 couple of days?

19 A. Yes, I was looking for work. Going  
20 out and I would go to her place, because it  
21 was around the corner from my father. So it  
22 was easy to go back and forth.

23 Q. In May of 2011, were you working  
24 your construction job or were you working  
25 someplace else?



1 C. MITCHELL

2 A. I was in the process of getting  
3 work. I had to shape.

4 Q. What does that mean?

5 A. To go out with the people and look  
6 for work.

7 Q. What type of work were you looking  
8 for?

9 A. Construction.

10 Q. On May 5th of 2011, were you  
11 assigned to a construction job?

12 A. No.

13 Q. In the twenty-four hours prior to  
14 6:25 a.m. on May 5, 2011, had you had any  
15 alcoholic beverages to drink?

16 A. No. Nothing.

17 Q. Had you had any prescription or non  
18 prescription drugs prior, twenty-four hours  
19 prior to that time?

20 A. No.

21 Q. At 6:25 a.m. on May 5, 2011, did you  
22 have contact with anybody else within the  
23 apartment?

24 A. Just the officers that came there.

25 Q. When did you first observe officers



1

C. MITCHELL

2

at the apartment?

3

A. When they came, busted into the room

4

and woke us up.

5

Q. When you say they busted into the

6

room, what room are you referring to?

7

A. To Ann's room.

8

Q. The bedroom?

9

A. Yes.

10

Q. Is that room where you were

11

sleeping?

12

A. Yes.

13

Q. When they came into the bedroom, was

14

that your first indication that the officers

15

were in the apartment?

16

A. Yes.

17

Q. Did you hear anything prior to that?

18

A. No.

19

Q. When they came into the bedroom,

20

were they wearing uniforms or regular

21

clothes?

22

A. They was in uniforms like special

23

gear. You know, helmets and well guns, well

24

rifles. I don't know big files and stuff

25

like that.



1

C. MITCHELL

2

Q. How many officers came into the

3

bedroom?

4

A. It was around three.

5

Q. Did all three officers have rifles?

6

A. Yes.

7

Q. Did all three have helmets?

8

A. Yes.

9

Q. When they came into the bedroom,

10

what did they say, if any thing?

11

A. They said freeze, don't move and get

12

up. Something like that, you know.

13

Q. What did you do next?

14

A. I stood still and I had my hands

15

out. I think they said let me see your

16

hands. It was like I'm waking up and it was

17

just a lot of yelling and you know. I just

18

raised up and I had my hands up.

19

Q. What did the officers do after you

20

raised your hands up?

21

A. They grabbed me.

22

Q. Where did they grab you?

23

A. They grabbed me in the front to turn

24

me around to cuff me.

25

Q. When they handcuffed you, did they



1 C. MITCHELL

2 handcuff you behind your back?

3 A. Yes.

4 Q. When they came into the room and  
5 told you to put your hands up, did they ask  
6 for your name or your identity?

7 A. Not at that time.

8 Q. Did they ask you any questions while  
9 you were you still in the bedroom?

10 A. They didn't ask me nothing they told  
11 us to freeze, put your hands up and they  
12 handcuffed me. And they like was holding me  
13 until -- you know, I was trying to ask them  
14 something, but they was like telling me not  
15 to say nothing and wait for the detectives or  
16 whoever was suppose to come behind them  
17 would tell you everything, because I was  
18 asking what is this about.

19 Q. After they handcuffed you, where did  
20 they take you?

21 A. They just took me in the hallway of  
22 the apartment.

23 Q. Outside of the apartment?

24 A. No, of the apartment, outside the  
25 bedroom.



1 C. MITCHELL

2 Q. How long did you stay in that  
3 hallway for?

4 A. I would say for maybe fifteen, ten  
5 minutes. I guess they was waiting for my  
6 girl and to handcuff her, cause she had to  
7 put something on.

8 Q. Did you observe them handcuff Ann  
9 Perry?

10 A. No, I was in the hallway.

11 Q. Did she ever come out of the  
12 bedroom?

13 A. Yes.

14 Q. When she came out of the bedroom,  
15 was she handcuffed?

16 A. Yes.

17 Q. After ten or fifteen minutes were up  
18 in the hallway, where did the officers bring  
19 you next?

20 A. They brought me into the backroom of  
21 the apartment.

22 Q. When you say backroom, what type of  
23 room is that?

24 A. It's a bedroom where Shaquana sleep  
25 at, they brought me into her room.



1 C. MITCHELL

2 Q. Was she in her bedroom at the time?

3 A. Well, at the time when I was in the  
4 hallway. It was like, they had already went  
5 back there, because there was more of them.  
6 Three came into my room I would say and some  
7 was in the other room and some was in the  
8 front. It was quite a few you know. And  
9 they just took me into an empty room and I  
10 guess she was in the front, because I didn't  
11 see her in our room and nobody was in the  
12 backroom. So, I assume she was in the front.  
13 Either in the living room or --

14 Q. When they brought you into that  
15 backroom, there was no one else in there?

16 A. There was no one else there.

17 Q. When they brought you to the  
18 backroom, did they ask you any questions or  
19 say anything to you?

20 A. No, they was telling me that the  
21 detective was coming, because I was still  
22 trying to ask them stuff.

23 Q. At any point did the detective come  
24 to the apartment?

25 A. Yes.



21  
C. MITCHELL

1  
2 Q. Did that detective speak with you?

3 A. Yes.

4 Q. Did he ask you any questions?

5 A. He just said is this you, Curtis  
6 Mitchell and I said yes. And I was like,  
7 what's this about. And he said well we have  
8 a search warrant, you know, for your arrest.  
9 And I said for what and he said, you know for  
10 drugs. And I said no, you got the wrong one.  
11 You know.

12 Q. When he said is this you, was he  
13 showing you something at the time?

14 A. He was showing a paper that's  
15 suppose to be a search warrant, because I  
16 asked him what is that.

17 Q. After you spoke with the detective,  
18 what happened next?

19 A. He just sat me down in there and he  
20 started asking me stuff about guns and drugs  
21 and all this and I don't know what you  
22 talking about. So he started screaming and  
23 do the right thing and tell us where it is at  
24 and all this type of stuff. You know, if you  
25 don't I'm going to take your family and all





22  
C. MITCHELL

1

2 this and all of that to jail.

3 Q. After you were done speaking with  
4 the detective, did they ever take you out of  
5 the apartment?

6 A. Yes.

7 Q. When you came back through the  
8 apartment, did you make any observations  
9 regarding any other people that were in the  
10 apartment at that time aside from the police  
11 officers?

12 A. Yes.

13 Q. Who or what did you see at that  
14 time?

15 A. When they was taking me out I seen  
16 everyone in the living room. Ann, her  
17 daughter, her son, Nina, the baby and that  
18 was it.

19 Q. The people that you saw in the  
20 living room that you just mentioned, were  
21 they handcuffed at that time?

22 A. The only one that wasn't I think  
23 Shaquana, because she was still holding the  
24 baby. Everybody else was handcuffed.

25 Q. Did you have a conversation with any



1 C. MITCHELL

2 of those people as you were coming back  
3 through the apartment?

4 A. No.

5 Q. When you were coming back through  
6 the apartment, did you have an opportunity to  
7 observe the condition of the apartment?

8 A. Well, very vaguely, because I looked  
9 in my room and all I seen was the light on  
10 and the windows open and the living room was  
11 a little dim, but there was an officer or two  
12 in there with them. And it was a few in the  
13 kitchen and then when I went to the hallway  
14 there was a few right there. I guess they  
15 was going to transport me to wherever they  
16 was taking me and that's all I saw.

17 Q. Did you observe, if anything, in the  
18 apartment was overturned or damaged or  
19 disturbed in any way?

20 A. No.

21 Q. No, you didn't observe or nothing  
22 was damaged or disturbed?

23 A. When I was being taken out nothing  
24 was done yet.

25 Q. Prior to them taking you out of the



1 C. MITCHELL

2 apartment, did they search you at all?

3 A. Yes, they searched me.

4 Q. Did they find any thing?

5 A. No.

6 Q. Did they take anything out of your  
7 pockets or off of you?

8 A. No, I was in bed I had nothing.

9 Q. After they took you out of the  
10 apartment, where did they bring you to next?

11 A. They took me to a van and they took  
12 me straight to the precinct.

13 Q. Do you know which precinct you went  
14 to?

15 A. 79th Precinct.

16 Q. When you got to the precinct, where  
17 is the first place in the precinct did they  
18 take you to?

19 A. They stood me in front, I think the  
20 sergeant, you know, at that desk when you  
21 first come in there. And they said something  
22 to him. Then they took me in the back in a  
23 cell and they stripped searched me and then  
24 they just left me back there.

25 Q. When they stripped searched you, did



1 C. MITCHELL

2 they find anything?

3 A. Nothing.

4 Q. When they finally brought you to the  
5 holding cell, how long did they leave you in  
6 there for?

7 A. Well, this happened like 6:00 in the  
8 morning, they didn't come back there until  
9 like maybe 3:00 --

10 Q. 3:00 in the afternoon?

11 A. 3:00 or 3:30, somewhere around  
12 there.

13 Q. Once they put you in the holding  
14 cell, did they take the handcuffs off of you?

15 A. Yes.

16 Q. In the time that you were in the  
17 holding cell, did anyone from the precinct  
18 come over to you and ask you any questions or  
19 have a conversation with you?

20 A. No.

21 Q. Once 3:00 or 3:30 came, where did  
22 they take you to next?

23 A. They took me to another area, where  
24 they started fingerprinting me.

25 Q. Did they also take your photograph?



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C. MITCHELL

A. Yes, they took my photograph.

Q. Did they take you out of the precinct after that or did they put you back into the holding cell?

A. They put me in a different holding cell.

Q. How long did you stay in that one for?

A. Maybe two or three hours.

Q. At at the end of that time period, where did did they take you next?

A. They took me to Central Booking I believe.

Q. How did you get to Central Booking?

A. I was in the van with other prisoners I believe.

Q. For the ride from the precinct to Central Booking, did any officer have a conversation with you or ask you any questions?

A. Not when the ride, but I was trying to get information when I was in that second holding pen. And the officer that fingerprinted me I was asking him what am I



1 C. MITCHELL

2 being charged with.

3 Q. This is still at the precinct --

4 A. Yes.

5 Q. The second holding cell?

6 A. Yes.

7 Q. Did he answer your question?

8 A. He told me that I was being charged  
9 with heroin and what else, he said heroin.

10 And I guess that was it.

11 Q. Are you referring to heroin?

12 A. Yes, drugs.

13 Q. Some kind of possession charge?

14 A. Yes, that's what he said. Well,  
15 this is what he was saying he found. So he  
16 was charging me with it.

17 Q. The officer told you that he found  
18 heroin in your apartment?

19 A. Yes.

20 Q. Did he say where in the apartment he  
21 found it?

22 A. He said it was in the room.

23 Q. Which room?

24 A. The room that I was in.

25 Q. Did he say how much was found?



28  
C. MITCHELL

A. He never told me how much.

Q. Do you recall if he said he was charging you with possession of it or that you were going to sell it?

A. He said possession. That's what he said. Possession of heroin.

Q. Did you have a conversation with anybody else at the precinct regarding the charges against you or any other conversations?

A. It was the guy that was watching the prisoners. I just kept trying to talk to him, asking him where is my arresting officer. You know, I'm here all these hours and they didn't feed me or anything and I wanted to know what was going on. I mean, you got me here all these hours and I wanted to what took place while they was back at the house and you know, I wanted to know.

Q. When you finally got to Central Booking, did you sit down with someone who asked you your information and ask you your background information?

A. Yes.



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C. MITCHELL

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Q. At that point, did the person ask  
3 you if you needed any medical attention for  
4 any reason?

5

A. Yes.

6

Q. What was your response to that?

7

A. I told them no.

8

Q. Did they ask you if you had any  
9 medical conditions that needed tending to?

10

A. I told them no.

11

Q. At that time did you indicate that  
12 you had sustained any injuries while you were  
13 in police custody that you needed medical  
14 care?

15

A. It was minor. It was just the cuffs  
16 were tight. It was that serious, but once  
17 they was off I was a little better. It ain't  
18 like circulation or blood my hands got a  
19 little swollen, I told her nothing. I didn't  
20 want no attention or nothing. They tell you,  
21 you know, you go to the hospital or whatever  
22 it's going to hold your case up and you know  
23 all that. And it wasn't that serious.

24

Q. After you spoke with that person,  
25 did they then put you in a holding cell?





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C. MITCHELL

A. Yes.

Q. How long did you stay in that holding cell for?

A. I stayed in there for -- they moved -- well, all right that first holding cell I stayed in there for maybe three or four hours. And then they moved me to another holding cell. It was like from holding cell to holding cell. It was like altogether a total of time, I would say about maybe twelve, thirteen hours somewhere maybe more. I lost count.

Q. During those approximately twelve or thirteen hours in the different holding cells, did any officers or anyone from Central Booking come over to you and ask you any questions or have a conversation with you?

A. No.

Q. When approximately those twelve or thirteen hours were up, where did they take you to next?

A. I went upstairs and saw the judge -- well, I saw my lawyer.



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C. MITCHELL

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Q. The lawyer that you met with, was that lawyer appointed by the court or was that your personal attorney?

5

A. Appointed by the court.

6

7

Q. Do you remember that attorney's name?

8

9

10

11

A. It was a woman. I know it was Catherine. Catherine, I don't remember her name fully. I know her first name was Catherine.

12

13

14

Q. That's okay. When you went before the judge, did they read the charges against you?

15

A. Yes.

16

17

Q. What were you charged with at that point?

18

19

20

21

A. I don't remember. But I know it was possession and they said something else, but I don't really remember what that was, but it was a lesser charge.

22

23

Q. After they read the charges against you, how did you plead?

24

A. I pled not guilty.

25

Q. After you pled not guilty, did the



1 C. MITCHELL

2 judge let you go or did they keep you?

3 A. They remanded me.

4 Q. Where did you go?

5 A. I went to Rikers Island.

6 Q. At any time after your arraignment  
7 when you were remanded to Rikers Island, did  
8 you ever go back before a judge or the grand  
9 jury?

10 A. I went back. I was just telling my  
11 lawyer that I wanted to go to the grand jury.

12 Q. Are you referring to the legal aid  
13 attorney?

14 A. Yes.

15 Q. Did you in fact go before the grand  
16 jury?

17 A. Yes, I did, but she did something  
18 that I didn't like and you know, she tried to  
19 get me to, you know, she was telling me about  
20 my record and such and such and doesn't think  
21 its a good idea, you know. Trying to not let  
22 me go.

23 MR. COHEN: Attorney/client  
24 privilege.

25 MS. SHWARTZ: Yes.



1 C. MITCHELL

2 MR. COHEN: Don't say anything  
3 else about your conversations that  
4 you had with your lawyer.

5 A. Okay.

6 Q. Don't tell me the details of your  
7 conversation.

8 A. Okay.

9 Q. Let me ask you this, did you go  
10 before the grand jury?

11 A. Yes.

12 Q. Do you remember the date you went  
13 before the grand jury?

14 A. It was -- I don't know the exact  
15 date.

16 Q. Do you recall what month?

17 A. It was the same month. It was May.

18 Q. Do you recall if it was May 20th of  
19 2011?

20 A. It was before the 20th. It was  
21 exactly eight days afterwards. Somewhere  
22 between eight and nine.

23 Q. After the arrest?

24 A. Yes, somewhere along there.

25 MS. SHWARTZ: Off the record.



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C. MITCHELL

(Whereupon, a discussion was held  
off the record.)

MS. SHWARTZ: Back on.

Q. Do you remember what date you got  
released from Rikers Island?

A. It was a Thursday from the time that  
I got locked up. It was that following -- I  
got locked up May 5th, I believe it was a  
Tuesday. I'm not sure. Maybe those day, but  
I know that following week, Thursday I got  
released.

Q. Meaning, the whole next week later  
and not three days later?

A. No, that week. Next week.

MR. COHEN: Not two weeks  
later.

A. Not two weeks. Cause I know my  
180-80 was like on a Tuesday and then they  
didn't -- I was going to court like every  
day. And I finally made it to the grand jury  
and they sent me back and before 11:00 at  
night. They called me to pack my stuff and I  
waited down in the receiving room and then  
they just released me. Then I got the letter



35  
C. MITCHELL

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2 from the lawyer -- I mean, not the lawyer the  
3 DA.

4 Q. When you got the letter from the DA,  
5 you had already been released from Rikers;  
6 right?

7 A. Yes.

8 Q. That letter was letting you know  
9 that all the charges had been dismissed?

10 A. Yes.

11 Q. After you were released from Rikers,  
12 where did you go?

13 A. I had went back to 433 real early in  
14 the morning, maybe 6:00. Maybe so I went  
15 there.

16 Q. When you went back there, did you  
17 have an opportunity to observe the condition  
18 of the apartment?

19 A. Yes, I did.

20 Q. Can you describe to me what the  
21 apartment looked like when you went back?

22 A. It was -- it was towed up, towed up.  
23 Everything was turned over. Flipped over.  
24 Pulled out, stuff everywhere. I mean, she  
25 recorded it and everything. But she said she



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C. MITCHELL

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wasn't going to touch nothing.

3

Q. She meaning who?

4

A. Ann.

5

Q. Do you know how she recorded it?

6

A. She had a little camcorder.

7

Q. So video? She recorded it on video?

8

A. Yes, the condition

9

Q. Do you know where did that video is

10

now?

11

A. I believe she has it.

12

Q. Let me ask you this, do you keep any

13

personal belongings at the apartment?

14

A. I have some clothes there.

15

Q. When you went back to the apartment

16

after being released from Rikers, were any of

17

your personal belongings missing?

18

A. Well, nothing really that I can

19

recollect. It was just everything was towed

20

up. Disarrayed.

21

Q. After you were released from Rikers,

22

did you seek medical attention for any

23

injuries you might have sustained while you

24

were you in police custody?

25

A. No.



37  
C. MITCHELL

1  
2 Q. After you were released from Rikers,  
3 did you seek treatment from any type of  
4 mental health professionals? Psychiatrist,  
5 psychologist, social worker?

6 A. No.

7 Q. Regarding what had happened.

8 A. No.

9 MS. SHWARTZ: I don't have any  
10 other questions for you. Thank you  
11 for coming in today.

12 MR. COHEN: Thank you.

13 (Time noted 12:54 p.m.)  
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C. MITCHELL

A C K N O W L E D G E M E N T

STATE OF NEW YORK)

I, Curtis Mitchell, hereby certify that I  
have read the transcript of my testimony taken  
under oath on January 24, 2012, that the  
transcript is a true, complete and correct  
record of what was asked, answered and said  
during my testimony under oath, and that the  
answers on the record as given by me are true  
and correct.

Signed and subscribed to  
before me, this \_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

Notary Public



C. MITCHELL

C E R T I F I C A T E

I, KARLA VALLARO, a shorthand  
reporter and Notary Public within and for  
the State of New York, do hereby certify:

That the witness(es) whose testimony  
is hereinbefore set forth was duly sworn by  
me, and the foregoing transcript is a true  
record of the testimony given by such  
witness(es).

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome  
of this matter.

*Karla Vallaro*

KARLA VALLARO



ORIGINAL

50-H HEARING

015220

- - - - - x BLA: 2011PI027481

In the Matter of the Claim of  
DEMETRICE PERRY,

Claimant,

-against-

CITY OF NEW YORK, CITY OF NEW YORK POLICE  
DEPARTMENT,

Respondents.

- - - - - x

225 Broadway, 13th Floor  
New York, New York

January 24, 2012  
12:56 p.m.

50-H HEARING of Demetrice Perry, the  
Claimant in the above-entitled action, held at  
the above time and place, pursuant to Notice,  
taken before Karla Vallaro, a shorthand  
reporter and Notary Public within and for the  
State of New York.

Ex. A-2



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A p p e a r a n c e s :

IRVING COHEN, ESQ.  
ATTORNEY for Claimant  
233 Broadway, Suite 2701  
NEW YORK, NY 10279

BY: IRVING COHEN, ESQ.

SHAPIRO, BEILLY & ARONOWITZ, LLP  
ATTORNEYS for Respondent  
225 Broadway, 13th Floor  
New York, NY 10007  
BY: DAWN SHWARTZ, ESQ.  
FILE #: NYC-2213  
INDEX #: 2011PI027481



D. PERRY

DEMETRICE PERRY, the witness herein, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MS. SHWARTZ:

Q. State your name for the record, please.

A. Demetrice Perry.

Q. State your address for the record, please.

A. 433 Lafayette Avenue, Apartment 12A, Brooklyn, New York 11238.

Q. Good afternoon, ma'am. My name is Dawn Shwartz and I represent the City of New York for the purposes of today's hearing. I'm going to be asking you some questions about your claim against the city.

I'm going to ask that all of your answers to my questions are verbal, so that the court reporter can take down everything that we're saying, because she can't take down head shakes, head nods or hand gestures.

A. Okay.



D. PERRY

Q. If you don't understand my question, just let me know. I'll try to rephrase it or say it in a different way. If you need to speak with your attorney for any reason or take a break, that's not a problem. Just let us know.

A. Okay.

Q. All I ask is that you answer the last question that I asked you before you go ahead and take that break. I'm also going to ask that even if you what I'm going to ask you and you already know the answer, you let me finish asking and then give your answer, because she can only take down what one of us is saying at a time.

A. Okay.

Q. How long have you lived at the address that you just gave to the reporter?

A. Twelve years.

Q. Does anyone currently live there with you?

A. Yes, my son, Shaquwan. Shaquwan Perry.

Q. Does anyone else live there with



D. PERRY

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you?

A. No.

Q. Does anyone else stay there with you  
on a regular basis?

A. Curtis Mitchell comes and stays once  
in a while. Like weekends sometimes, you  
know.

Q. Out of a seven-day week, how many  
nights a week does Mr. Mitchell stay with  
you?

A. I would say about, four.

Q. Are you known by any other name or  
alias?

A. No.

Q. Have you ever gone by the name of  
Ann?

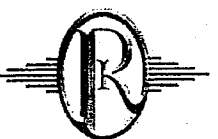
A. Yes, that's my middle name.  
Demetrice Ann.

Q. Does anybody refer to you by that  
name or know you by that name?

A. Yes, because I prefer Ann. I don't  
like my first name Demetrice.

Q. You go by Ann?

A. Yes.



D. PERRY

1

2

Q. What is your social security number?

3

A. 113-56-2789.

4

Q. Your date of birth?

5

A. 12/5/63.

6

Q. Are you currently employed?

7

A. No, not at the time. I just

8

finished the job in December.

9

Q. What job was that?

10

A. Urban Space.

11

Q. What is that?

12

A. It was down -- like outside mall.

13

Dealing with they had vendors with stores and

14

food. It's Downtown Brooklyn.

15

Q. What did you do there?

16

A. Maintenance.

17

Q. In May of 2011, were you employed?

18

A. Yes.

19

Q. What were you doing at that time?

20

A. Working for Urban Space.

21

Q. In maintenance?

22

A. Yes.

23

Q. In May of 2011, were you earning

24

income any other way, aside from doing

25

maintenance for Urban Space?

